



ADMINISTRATION AND
MANAGEMENT

OFFICE OF THE SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1950

APR 16 2010

MEMORANDUM FOR PRINCIPAL DIRECTOR, OFFICE OF THE DEPUTY UNDER
SECRETARY OF DEFENSE FOR MILITARY
COMMUNITY AND FAMILY POLICY

SUBJECT: Appointment of Additional Members to the Department of Defense (DoD)
Military Family Readiness Council (MFRC)

This responds to your March 16, 2010 memorandum requesting to modify the DoD MFRC's charter (TAB A). Some of the proposed modifications can be incorporated fully; others require further comment. Information on each of the proposed modifications is provided at TAB B. With regard to the proposed modifications, I recommend a concise Action Memorandum that addresses the salient points that the Secretary needs to consider and approve. A proposed revision is at TAB C.

If you, your Designated Federal Official, or your staff have any questions, please contact my Advisory Committee Management Officer, Mr. Frank Wilson, at (703) 601-6011, or his deputy, Mr. Jim Freeman, at (703) 601-6128. You may also contact my legal counsel on Federal Advisory Committee Act issues, Mr. Don Perkal and Ms. Stephanie Bibighaus, at (703) 693-7374.

Michael L. Rhodes
Director

Attachments:
As stated

TAB A

CHARTER
DEPARTMENT OF DEFENSE MILITARY FAMILY READINESS COUNCIL

1. Committee's Official Designation: The Committee shall be known as the Department of Defense Military Family Readiness Council (hereafter referred to as "the Council").
2. Authority: The Secretary of Defense, under the provisions of 10 U.S.C. § 1781a, the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix), and 41 CFR § 102-3.50(a), established the Council.
3. Objectives and Scope of Activities: The Council shall review and make recommendations to the Secretary of Defense regarding the policy and plans required under 10 U.S.C. § 1781b; monitor requirements for the support of military family readiness by the Department of Defense; and evaluate and assess the effectiveness of the military family readiness programs and activities of the Department of Defense.
4. Description of Duties: The Council, no later than February 1st of each year, shall submit a report on military family readiness. Each report, at a minimum, shall include the following:
 - a. An assessment of the adequacy and effectiveness of the military family readiness programs and activities of the Department of Defense during the preceding fiscal year in meeting the needs and requirements of military families.
 - b. Recommendations on actions to be taken to improve the capability of the military family readiness programs and activities of the Department of Defense to meet the needs and requirements of military families, including actions relating to the allocation of funding and other resources to and among such programs and activities.
5. Agency or Official to Whom the Committee Reports: The annual report referenced in (4) above shall be submitted to the Secretary of Defense and the congressional defense committees.
6. Support: The Department of Defense, through the Under Secretary of Defense for Personnel and Readiness, shall provide support as the Under Secretary deems necessary for the performance of the Council's functions and shall ensure compliance with the requirements of 5 U.S.C., Appendix.

Additional information and assistance, as required, may be obtained by the Under Secretary of Defense for Personnel and Readiness from other DoD Components with contracting authority, support contractors, including DoD Federally Funded Research and Development Centers for studies and analysis support.

7. Estimated Annual Operating Costs and Staff Years: It is estimated that the annual operating costs, to include travel and contract support is approximately \$5,000,000.00. The estimated annual DoD personnel costs are two (2.0) full-time equivalents (FTE).
8. Designated Federal Officer: The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures.

In addition, the Designated Federal Officer is required to be in attendance at all meetings; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

9. Estimated Number and Frequency of Meetings: The Council shall meet at the call of the Designated Federal Officer, in consultation with the Chairperson. The Council shall meet not less than two times per year.
10. Duration: The need for this advisory function is on a continuing basis; however, the Charter is subject to renewal every two years.
11. Termination: The Council only terminates if its statutory authorization is rescinded.
12. Membership and Designation: The Council, pursuant to 10 U.S.C. § 1781a(b), as amended by section 562 of Public Law 111-84, shall be comprised of no more than 14 members, appointed as specified below:
 - a. The Under Secretary of Defense for Personnel and Readiness, who shall serve as chair of the Council.
 - b. One representative of each of the Army, Navy, Marine Corps, and Air Force, who shall be appointed by the Secretary of Defense.
 - c. The senior enlisted advisors of the Army, Navy, Marine Corps, and Air Force, or the spouse of a senior enlisted advisor in lieu of that Military Services' senior listed advisor.
 - d. One representative from the Army National Guard or Air National Guard, who shall be appointed by the Secretary of Defense.
 - e. One representative from the Army Reserve, Navy Reserve, Marine Corps Reserve or Air Force Reserve, who shall be appointed by the Secretary of Defense.
 - f. Three individuals appointed by the Secretary of Defense from among representatives of military family organizations, including military family organizations that represent the Regular and Reserve Components.

With regard to membership requirements of 12b above, the Secretary of Defense has appointed the Vice Chief of Staff, U.S. Army; the Vice Chief of Naval Operations, U.S. Navy; the Vice Chief of Staff, U.S. Air Force; and the Assistant Commandant of the U.S. Marine Corps. With regard to membership requirements of 12c above, the Secretary of Defense has appointed the senior enlisted members of the Army, Navy, Air Force and Marine Corps. The appointments of these members pursuant to 12b and 12c, unless otherwise amended by the Secretary of Defense, shall remain in effect for the life of the Council, and these appointments will be based upon the specified DoD ex officio positions. Thus, Council membership of the particular individual serving as the member in a specified position shall be terminated at the conclusion of the member's qualifying status in that position. The successor in office shall assume the position as a Council member.

If the Secretary of Defense amends his standing appointment pursuant to 12c for the senior enlisted members of the Military Services to serve based upon the specified DoD ex officio positions, and the Secretary appoints a spouse of a senior enlisted member in lieu of the senior enlisted member from a particular Military Service, the spouse would be appointed as a special government employee, unless the spouse was a regular government employee in his or her own right. The appointment of special government employees shall not be for more than one year, but may be renewed. However, if a spouse of a senior listed member is appointed pursuant to 12c, such membership shall terminate at the conclusion of the senior enlisted member's tour of duty during which the spouse was appointed to the Council.

Pursuant to 10 U.S.C. § 1781a, as amended by section 562b of Public Law 111-84, individuals selected and appointed to positions covered by the membership requirements of 12d through 12f above shall serve three year terms on the Council. Representation on the Council for 12d shall alternate every three years between the Army National Guard and the Air National Guard. Representation on the Council for 12e shall rotate among the Reserve Components listed in 12d pursuant to a set rotational scheme approved by the Secretary of Defense, in consultation with the Under Secretary of Defense for Personnel and Readiness. Council membership pursuant to 12d through 12f shall terminate at the conclusion of the member's qualifying status. The successor in office shall assume the position as a Council member for the remainder of the three-year term.

Members of the National Guard and Reserve Components, who are assigned to title 10, United States Code positions, when appointed to the Council, shall serve as regular government employees.

Council members appointed by the Secretary of Defense, who are not full-time or permanent part-time employees of the federal government, shall be appointed as experts and consultants under the authority of 5 U.S.C. § 3109, and serve as special government employees, whose appointments must be renewed on an annual basis.

The Secretary of Defense, in consultation with the Chairman of the Joint Chief of Staff and pursuant to 41 CFR § 102-3.130(g), may appoint the spouse of a senior U.S. military flag officer (military pay grade O-9 or O-10) to serve as an advisor to the Council. This senior spouse advisor shall be appointed as an expert and consultant under the authority of 5 U.S.C. § 3109, and shall serve as a special government employee, unless he or she is a regular government employee in his or her own right. As an expert and consultant under Section 3109, this senior spouse advisor shall have no voting rights on the Council or its subcommittees; nor shall this senior spouse advisor participate in the deliberations of the Council or its subcommittees.

With the exception of travel and per diem for official travel, Council members appointed as special government employees shall serve without compensation.

13. Subcommittees: With DoD approval, the Council is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. § 552b), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Council, and shall report all their recommendations and advice to the Council for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Council; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Council members.

14. Recordkeeping: The records of the Board and its subcommittees shall be handled according to section 2, General Record Schedule 26 and appropriate Department of Defense policies and procedures. These records shall be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).

15. Filing Date: November 14, 2008

16. Charter Modified:

TAB B

PROPOSED MODIFICATIONS

1. Adding two new members to the Council can be done (reference paragraphs 12d and 12e of the proposed charter). However, clarification should be added regarding the Secretary's authority to determine the rotational scheme for the Reserve Component member that is consistent with 10 U.S.C. § 1781a.
2. Concerning the appointment of non-serving Component representatives as advisors to the Council. Recommend that we have the Secretary of Defense authorize the formation of a permanent Council subcommittee, which would include the non-serving National Guard and Reserve Component representatives. Reasoning includes:
 - a. Legal Counsel has indicated that having the four non-serving Reserve and National Guard representatives appointed as advisors to the Council could jeopardize the Council's work because the membership would likely be deemed contrary to the balanced structure mandated by Congress, as well as run afoul of the Federal Advisory Committee Act (FACA) of 1972 and DoD requirements regarding balance and avoidance of inappropriate influence by any particular interest.
 - b. As set out in the amended statute governing Council membership, Congress intended to have two individuals serve on the Council for a three-year term – one to represent the Army and Air Force National Guard; and one to represent the Army Reserve, Navy Reserve, Marine Corps Reserve and Air Force Reserve. As such, during the three year term, the serving Reserve Component Member is the representative of all four Reserve Components; and the serving National Guard Component Member is the representative for both National Guard Components.
 - c. To ensure that the two serving Component Members appropriately represent the interests of their Components as well as the non-serving Reserve and National Guard Components during their three-year terms, as stated above, the Secretary of Defense can approve the formation of a permanent Council subcommittee to include the non-serving Component representatives.
 - d. Once the agenda is set for the Council's meeting, the subcommittee chairperson could meet with the non-serving Reserve and National Guard Component representatives to discuss the tabled issues and ensure that he or she was fully informed of the interests of non-serving Components. This would ensure that the non-serving Reserve and National Guard Component members had input on issues, while still properly maintaining the balanced membership as mandated by Congress in the governing statute. Please note

that the Council's Designated Federal Officer must also attend the subcommittee meetings.

3. Concerning whether there is a rotational scheme for the three individuals whom the Secretary of Defense appoints among representatives of military family organizations, including military family organizations that represent the Regular and Reserve Components (a required membership category in the November 14, 2008 Charter and the 2010 Amended Charter). To clarify, there is not a rotational scheme for these members. The Secretary of Defense has full discretion to appoint these members, and each member appointed by the Secretary serves a term of three years.
4. Concerning amending the Charter to allow Council Member Alternates, to participate in and vote on deliberative matters being considered by the Council, such as the spouses of senior enlisted advisors as alternates/substitutes for the duly appointed senior enlisted advisors, or spouses of senior flag officers as alternates/substitutes for the duly appointed Reserve Guard Component members. For the reasons set out below, the Charter cannot be amended in this manner. However, as further set out below, the Charter already allows certain spouses to be appointed by the Secretary of Defense as full members, as opposed to "alternates."
 - a. Individuals appointed to advisory committees subject to the Federal Advisory Committee Act (FACA) of 1972 represent the American public and serve at the pleasure of the appointing authority. Within the Department of Defense, the appointing authority rests with the Secretary of Defense and the Deputy Secretary of Defense. With regard to the Department of Military Family Readiness Council, the statute (10 U.S.C. § 1781a) clearly states that the appointing authority is the Secretary of Defense.
 - b. The Secretary of Defense has appointed the Department of Defense Military Readiness Council Members, and thus, they are the only individuals legally authorized to deliberate on the substantive matters before the Council and to make recommendations to the Secretary of Defense. Allowing an alternate or someone other than a duly appointed Council Member to assume this legal authority would circumvent the Secretary of Defense's statutory appointment authority, and potentially jeopardize the work of the Council.
 - c. Thus, there is not an option to allow spouses of senior enlisted advisors as alternates/substitutes for the duly appointed senior enlisted advisors. Nor is there an option to allow senior flag officer spouses as alternates/substitutes for the duly appointed Reserve/Guard Component members.

- d. To provide some flexibility, there is currently an option in 12c of the 2010 Amended Charter allowing the Secretary of Defense to appoint spouses of senior enlisted members from the Army, Navy, Marine Corps and Air Force in lieu of the Military Services' senior enlisted advisor. If a spouse is appointed by the Secretary, the spouse will be a duly appointed member, who thus will be legally authorized to deliberate on substantive matters before the Council and to make recommendations to the Secretary.
- 5. The Federal Advisory Committee Act (FACA) of 1972 and the Government in the Sunshine Act of 1976 impose exacting limitations that could impact on senior Defense official participation. If you find the seniority of the Service representatives and their general availability adversely affects the Council's mission, you have the option to recommend that the Secretary of Defense appoint spouses of senior enlisted advisors. To do so, would entail coordination with the Secretary of the particular Military Department. You could also recommend that the Secretary appoint less senior personnel for other Council Members. If the Secretary approved such a recommendation, the Charter would need to be amended to reflect those appointments.
- 6. As a general note, a basic FACA tenet is that Agencies will ensure that, in the selection of members, they consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. The Sponsor should ensure membership is balanced and inclusive of the various factions of the DoD military community.

TAB C

ACTION MEMO

FOR: SECRETARY OF DEFENSE

DepSec Action _____

FROM: Clifford L. Stanley, Under Secretary of Defense for Personnel and Readiness

SUBJECT: Appointment of Additional Members to the Department of Defense Military Family Readiness Council ("Council")

- To obtain your approval (1) to appoint two additional members to the Council; (2) to set a rotational scheme for the two additional members; and (3) to establish a permanent subcommittee to the Council.
 - The Council was established by 10 U.S.C. § 1781a, and the Council is subject to the Federal Advisory Committee Act (FACA) of 1972.
 - FY 2008 NDAA amended § 1781a by adding two new members – (1) one representative from the Army National Guard or Air National Guard ("National Guard Components"), and (2) one representative from the Army Reserve, Navy Reserve, Marine Corps Reserve or Air Force Reserve ("Reserve Components"). Each of these representatives is to serve a three year term. The statute did not outline the rotational scheme for these two new member categories.
- After consulting with the National Guard and Reserve Components, I recommend that the following members be appointed in their DoD ex officio positions to serve on the Council for a three year term according to the following rotational scheme:
 - National Guard Components – Director of the Army National Guard first, followed by the Director of the Air National Guard. Subsequent rotations would follow the same pattern.
 - Reserve Components – First the Commander, Marine Forces Reserves; followed by the Chief of Navy Reserves; then the Chief of Air Force Reserve Command; and then the Commanding General, U.S. Army Reserve Command. Subsequent rotations would follow the same pattern.
- To ensure that the two serving Component members best represent the interests of their Components as well as the non-serving Components, recommend the establishment of a permanent Council subcommittee to include those National Guard

and Reserve Component representatives who are not at that time serving as Council members.

- Once the agenda is set for the Council's meeting, the subcommittee chairperson could meet with the non-serving National Guard and Reserve Component representatives to discuss the tabled issues and ensure that he or she was fully informed of the interests of the non-serving Components.
- Such an arrangement allows the non-serving Reserve and National Guard Components input on issues, while still complying with congressional and FACA mandates.
- Recommend the appointment of the serving National Guard member as the permanent subcommittee chairperson and that the non-serving Reserve Component member also be appointed as a member of the subcommittee.

Recommendation: That Secretary of Defense approve by initialing

- (a) Appointment of the two new members based upon their ex officio DoD positions.

Approve _____ Disapprove _____

- (b) Proposed rotational scheme for the National Guard and Reserve Components.

Approve _____ Disapprove _____

- (c) Establishment of a permanent subcommittee to the Council comprised of the non-serving Reserve and National Guard Component members, with the chairperson being the serving National Guard member.

Approve _____ Disapprove _____

Prepared by: CDR Quinn Skinner, 703-614-4083